

PROBATE & ESTATE PLANNING SECTION

July 2, 2007

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Approved Court Forms
P.O. Box 30048
Lansing, MI 48909

Re: Probate Forms Committee Meeting

Dear Sir or Madam:

The Probate and Estate Planning Council is proposing a new form and some changes in existing forms for discussion at the Probate Forms Committee Meeting scheduled for September 6, 2007. In general, we are proposing changes in the enclosed forms in order to engender uniformity of practice in the probate courts.

We have enclosed a proposed change to the Letter of Authority (PC 572) to add an instruction to state that the minimum fee for a Letter of Authority is \$12. MCL 600.2546 states that the fee for certified copies is \$10 plus \$1 per page. We have been advised that SCAO's interpretation of this statutory section is that the charge for each letter of authority should be \$12 or more, depending on the number of pages. Courts are charging from \$0 to \$12 for letters of authority. An instruction indicating that the minimum charge should be \$12 may resolve this uniformity of practice issue.

A new form entitled Affidavit of Incumbency is also enclosed. Some courts are requiring this form before an estate can be closed when estate assets are poured over to a trust, even though MCR 5.501(E) provides that a trustee "may" file an affidavit of incumbency when assets from a decedent estate are transferred to a trust. Attorneys are requesting a form to deal with this requirement. We have enclosed a proposed form entitled Affidavit of Incumbency with an instruction that filing the Affidavit of Incumbency is not required by statute or court rule.

Some courts are requiring that the petitioner file the form Testimony Interested Persons (PC 565) before the court will issue an order for a small estate. Pursuant to MCL 700.3982 the court may require additional

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information. Since this requirement of filing the Testimony Interested Persons often takes attorneys by surprise, we propose to add an instruction to PC 556 warning that the court may require that the petitioner file a Testimony Interested Persons be filed along with the Petition and Order for Assignment.

There is often confusion as to what type of guardianship petition to file for a disabled person. If the cause for certain conditions occurs before age 22, a Petition for a Guardianship for a Developmentally Disabled Individual (PC 658) should be filed rather than a Petition for Appointment of Guardian of Incapacitated Individual (PC 625). In order to help the clerks at the counter to flag this issue, we propose adding a line to the Petition for Appointment of Guardian of Incapacitated Person asking about the age that the disability occurred.

The problem of valuing joint property on a conservatorship inventory is still with us. In order to flag joint assets, we propose that a separate column be added to the inventory that the conservator can check if property is held jointly with others. We also propose adding an instruction that joint property should be valued at 100% of its value, with information about the other joint owners provided in the description of the property.

We appreciate the opportunity to make suggestions to the Probate Forms Committee and to submit proposed forms for approval. Please contact Joan Von Handorf at 248-421-0477 if you have any questions or suggestions.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas A. Mielock", written in a cursive style.

Douglas A. Mielock
Chair of Probate and
Estate Planning Section

Enclosures

In the matter of _____

as a complete and accurate inventory of all the assets of the estate and the fair market valuations as of the:

- | PERSONAL PROPERTY AND REAL ESTATE (If
Definitions and instructions for completing the inventory are on the other side of this form) | Value of
property | Check if
property is
held with another
owner |
|--|----------------------|---|
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| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| TOTAL ASSETS | | |

Date _____

Signature _____

Name (type or print) _____

Address _____

City, state, zip Telephone no.

MCL 700.3706, MCL 700.3707, MCL 700.5417, MCR 5.307, MCR 5.310, MCR 5.409(B)

DEFINITIONS AND INSTRUCTIONS FOR COMPLETING THE INVENTORY:

- **Real property** means land including a building or house that is built on the land.
 - **Personal property** means everything that a person owns except real property. Personal property includes bank accounts and checking accounts.
 - **If value of real or personal property is determined by an appraisal**, include appraiser's name and address and a description of property appraised.
 - **For conservatorships and guardianships, property that the protected person owns jointly or in common with others** must be listed along with the type of ownership. and names and addresses of the other owners.
Value joint property at 100% of its value.
1. When listing real property, provide the legal description of the property and the name of any other owner.
 2. When listing personal property, provide enough detail to adequately determine the value. Some things should be listed separately and some things should be combined under one category.

Examples of things that should be listed and valued separately are:

- Automobiles
- Jewelry
- Bank accounts
- Antiques
- Furniture
- Any other individual item of high value (such as a fur coat)

Examples of things that can be listed in categories are:

- Household items such as dishes, flatware, curtains, linens, utensils, clothing, furnishings, etc. can be grouped into several categories or combined into one category.
- Multiple copies or pieces of a specific item that have the same value such as stocks and bonds.